

January 21, 1999



OFFICE OF THE  
ATTORNEY GENERAL  
STATE OF TEXAS

— \* —  
JOHN CORNYN  
Attorney General

— \* —  
P.O. Box 12548  
Austin, Texas  
78711-2548  
(512) 463-2100  
www.oag.state.tx.us

Ms. Jennifer D. Soldano  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR99-0165

Dear Ms. Soldano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 121554.

The Texas Department of Transportation (the "department") received a request for certain information relating to an incident that involved the requestor. You state that you will provide the requestor with some of the requested information. However, you claim that the witness statements and identity of the complainant are excepted from public disclosure pursuant to section 552.101 of the Government Code in conjunction with the "informer's privilege." We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Texas courts have long recognized the informer's privilege, *see Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S.W.2d 724, 725 (Tex. Crim. App. 1928), and it is a well-established exception under the Open Records Act, Open Records Decision No. 549 at 4 (1990). It protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided that the subject of the information does not already know the informer's identity. Open Records Decision Nos. 515 at 3 (1988), 208 at 1-2 (1978). The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law enforcement within their particular spheres." Open Records Decision No. 279 at 2 (1981) (citing *Wigmore, Evidence*, § 2374, at 767 (McNaughton rev. ed. 1961)). The report

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must be of a violation of a criminal or civil statute. *See* Open Records Decision Nos. 582 at 2 (1990), 515 at 4-5 (1988). Where statements evidence no wrongdoing or violation of law, they are not protected by the informer's privilege. Open Records Decision No. 549 (1990); *see also* Open Records Decision No. 515 (1988) (where letters do not describe conduct which is clearly criminal, they are not excepted by the informer's privilege).

You assert that the complainant and witnesses alleged that a former employee threatened other employees, and that the "offense . . . could have been reported to law enforcement." The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority. ORD 515 at 3. The department does not have criminal or quasi-criminal law-enforcement authority. Therefore, you may not withhold the information under section 552.101 and the informer's privilege.

You urge that "[r]eleasing the witnesses' names and statements might jeopardize the safety of the witnesses." The existence of special circumstances, such as an imminent threat of physical danger as opposed to a generalized and speculative fear of harassment or retribution, may make public disclosure of information an unwarranted invasion of personal privacy. *See* Open Records Decision No. 169 (1977). We do not believe that you have shown the existence of such special circumstances. Therefore, the department may not withhold any of the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in dark ink, appearing to read "Yen-Ha Le".

Yen-Ha Le  
Assistant Attorney General  
Open Records Division

YHL/nc

Ref.: ID# 121554

Enclosures: Submitted documents

cc: Mr. Raymond Thompson  
2107 Cary Circle  
Bryan, Texas 77803  
(w/o enclosures)